



City of NORFOLK


To the Honorable Council
City of Norfolk, Virginia

June 23, 2015

From: David S. Freeman, AICP, Director
Department of General Services

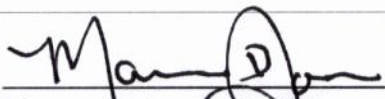
Subject: Revocable License
Agreement for the use of City-Owned
Property Located at 1188 Lance Road

Reviewed:


Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: City-wide

Approved:


Marcus D. Jones, City Manager

Item Number:

R-4

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk
Department of General Services
Bureau of Fleet Management
1188 Lance Road
Norfolk, Virginia

III. **Description**

This agenda item is an Ordinance to approve a Revocable License Agreement with Genuine Parts Company (NAPA) for the use of city-owned property (Fleet Management) located at 1188 Lance Road.

IV. **Analysis**

The Department of General Services - Bureau of Fleet Management is improving efficiency and reducing costs by partnering with NAPA for the provision of a turn-key on-site parts operation. As part of this transition, NAPA will set up and operate out of the city-owned Fleet Management site located at 1188 Lance Road.

V. **Financial Impact**

There is no financial impact related to the Revocable License Agreement. However, by improving the efficiency of the City's Bureau of Fleet Management, reducing inventories and partnering with an experienced turn-key on-site operator, it is expected that the City will streamline operations improving productivity and realize savings.

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This ordinance has been coordinated with the Department of General Services – Bureau of Fleet Management, Office of the Purchasing Agent and the City Attorney's Office.

Supporting Material from the Department of General Services:

- Ordinance to approve a Revocable License Agreement for the use of city-owned property located at 1188 Lance Road
- Contract for a Revocable License Agreement Between the City and Genuine Parts Company

5/27/15 MPM:sb
Form and Correctness Approved:

Contents Approved:

By Martha P. McGowan
Office of the City Attorney

NORFOLK, VIRGINIA

By [Signature]
DEPT. GENERAL SERVICES

ORDINANCE No.

AN ORDINANCE APPROVING A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF NORFOLK AND GENUINE PARTS COMPANY FOR THE USE OF CERTAIN CITY-OWNED PROPERTY LOCATED AT 1188 LANCE ROAD FOR THE PROVISION OF A TURN KEY ON-SITE PARTS OPERATION.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Revocable License Agreement ("License") between the City of Norfolk ("City") and Genuine Parts Company ("GPC"), a copy of which is attached hereto as Exhibit A, whereby the City grants to GPC the right to enter upon and use certain City-owned property located at 1188 Lance Road, which property is more specifically described in Exhibit A, for purposes of a turn key on-site parts operation, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the License on behalf of the City and to do all things necessary and proper to carry out the terms of the License.

Section 3:- That the City Manager is further authorized to correct, amend or revise the License as he may deem necessary to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after its adoption.

REVOCABLE LICENSE

This Revocable License is granted by the City of Norfolk to the Contractor as part of the Contract dated _____, 2015 between the City and Genuine Parts Company, DBA NAPA Auto Parts (the "Contractor") in order to allow the Contractor to provide a Turn Key On-Site Parts Operation at the City's Facility located at 1188 Lance Road, Norfolk, Virginia and is subject to the terms and condition of such Contract and the provisions set forth below. Contractor specifically agrees to the provisions set forth herein and that this License Agreement is revocable by the City in the City's sole discretion by the City giving the Contractor 7 days written notice of such revocation. The following are the terms and conditions of this License:

1. Grant of License.

The City hereby grants to Contractor a Revocable License (License) to use only that part of the City's Fleet Management Facility located at 1188 Lance Road, Norfolk, Virginia, that the City has designated as the Parts Operation area in order for Contractor to provide the City with a source to obtain parts for vehicles and equipment, tools, supplies, and related items (parts and items), for any City department, through the City's Office of Fleet Management, so such City departments may need to perform their work. Such area is referred to as the "Licensed Area." (See attached drawing marked as Exhibit A, which is made a part hereof and shows the Licensed Area.)

2. Term of License.

The term of this License shall run concurrently with the term of the above mentioned Contract between the parties. If such Contract expires or is terminated, then this License shall automatically terminate without any further notice. Also, this License may be revoked by the City at any time, in the City's sole discretion, by the City giving the Contractor 7 days written notice of such revocation, except in the case of an emergency or for health or safety reasons, in which case the City may immediately revoke this License.

3. Use of Licensed Area.

Contractor shall use the Licensed Area only for the purpose of conducting Contractor's Parts Operation activities as called for by the above mentioned Contract for supplying parts and items to City departments, through the City's Office of Fleet Management, and subject to the terms and provisions of such Contract and this License.

4. Condition of Licensed Area.

Contractor acknowledges that the Licensed Area is being delivered to Contractor in an AS IS condition and that Contractor is solely responsible for having examined and investigated such Licensed Area to be sure the Licensed Area is suitable for the purposes that Contractor intends to use the Licensed Area for, namely Contractor's Parts Operation activities. Contractor will be solely responsible for making all such improvements necessary to use the Licensed Area for such purposes during the entire term of this License.

5. Improvements to Licensed Area.

Contractor agrees that prior to Contractor doing any work in the Licensed Area or any other improvements that Contractor places in the Licensed Area, Contractor will submit plans and

drawings or a description of any such items to the City's Director of General Services and any other required City official for review and approval and will not proceed with any such actions until such prior review and written approval have been obtained.

6. Compliance with Laws.

Contractor agrees to comply with all applicable city, state, and federal laws, ordinances, regulations, statutes, and codes, including all relevant zoning, building, environmental, and safety codes, in connection with any construction, maintenance, improvements, and/or operation of the Contractor's Parts Operation activities in the Licensed Area.

7. Maintenance of and Failure to Maintain Licensed Area.

Contractor shall be solely and fully responsible for setting up, maintaining, cleaning, operating, providing security, and otherwise being in charge of the Licensed Area so that the Contractor can provide the Parts Operation activities called for by the above-mentioned Contract. However, should Contractor fail to properly and timely maintain the Licensed Area and/or provide any of the other items as required by this License and/or the above-mentioned Contract, the City may provide for such maintenance and/or items and will be entitled to recover all of City's reasonable costs and expenses, including attorney's fees, from Contractor and Contractor agrees to pay all such monies to City within ten (10) days after demand for such from the City.

8. Utilities.

The City will pay for utilities for the Licensed Area, like electric, water, and a land line phone, and will handle every day general trash like paper and such items, but not any hazardous wastes or any other items requiring special handling or disposal.

9. Return of Licensed Area.

Contractor agrees that upon the expiration and/or termination of this License, or any extensions thereof, that Contractor will return the Licensed Area to the City in as good a condition as it was at the start of the License, ordinary wear excepted, and that all permanent improvements to the Licensed Area by the Contractor will become the property of the City upon any such termination or expiration of this License. However, Contractor may remove, at Contractor's sole expense, any of Contractor's temporary or personal property not permanently affixed to the Licensed Area provided it will not cause any damage to the Licensed Area and Contractor will repair, to the satisfaction of the City, any damages to the Licensed Area caused by any removal of such items.

10. Security.

Contractor agrees to be responsible for provision of security for the Licensed Area. This includes such measures as may be needed.

11. No Damage to Licensed Area.

Contractor agrees not to and shall not commit or permit any act which results in any wasting or damage to the Licensed Area. Should any such waste or damage occur, the Contractor will repair and/or replace all damaged items or areas to the satisfaction of the City, or, at the City's option, pay the City the reasonable cost of the City having such work performed. Normal wear and tear excepted.

12. Responsibility for Licensed Area.

Contractor agrees that Contractor shall be responsible for any and all damages to the Licensed Area due to Contractor's use and/or for any and all other claims arising from such use and/or Contractor's actions or omissions, including, but not limited to, any damages to vehicles, any loss of personal property, any personal injuries, and any other injuries or damages of any type. Normal wear and tear excepted.

13. Protection of Licensed Area.

Contractor agrees that if Contractor breaches any of the provisions of this License, the City may take any actions necessary to protect and/or maintain the Licensed Area and that Contractor will pay the City all damages, costs, and expenses, including attorney's fees, incurred by the City for such actions.

14. Risk of Loss.

Notwithstanding anything herein to the contrary, Contractor shall bear the risk of any loss of or damage to the Licensed Area and/or any goods and items in the Licensed Area during the term of this License. Also, notwithstanding anything herein to the contrary, City shall not be liable for any direct, consequential, incidental, or any other damages incurred by Contractor due to any malfunction, vandalism, acts of God (including, without limitation, lightning, wind, rain, flood, hail, fire or storms) lack of electricity, lack of air conditioning, lack of heat, or any other damages resulting from any reason whatever to the Licensed Area or arising out of or resulting from any use of the Licensed Area by the Contractor.

15. Insurance.

Contractor, and any of its contractors, agents, or representatives doing any work or providing any services on or in connection with the Licensed Area, shall obtain and maintain during the life of this License, including any extensions, the following insurance coverages and provide the requirements set forth hereinafter for such coverage:

A. In addition to any other insurance required under this License or the above-mentioned Contract, the Contractor shall procure and keep in force during the term of this License insurance for the Licensed Area and Contractor as follows:

- a. Commercial General Liability insurance with minimum limits of \$2,000,000.00 each occurrence, \$4,000,000.00 aggregate. These limits may be achieved through the use of an umbrella policy which states by endorsement it follows the form of the primary coverage.
- b. Automobile liability for any auto, hired autos, owned, and non-owned autos of \$2,000,000.00 minimum limit.
- c. The above limit amounts may be met by an umbrella liability policy following the form of the underlying coverage in a minimum amount of \$2,000,000.00 each occurrence, \$4,000,000.00 aggregate.

B. Workers' Compensation and Employer's Liability:

- a. Workers' Compensation: If applicable, statutory coverage for Virginia, and shall contain a waiver of subrogation in favor of the City of Norfolk, its officers, agents and employees, and an endorsement from the insurer to this effect shall be received by City's Risk Manager before the start of the interim transition activities by Contractor.

C. Employer's Liability:

- a. \$100,000-Bodily injury by accident each occurrence.
- b. \$500,000-Bodily injury by Disease Policy Limit.
- c. \$100,000-Bodily Injury by Disease each employee.

D. Property coverage to protect any goods or items in the Licensed Area.

E. All such insurance shall be primary and noncontributory to any insurance and/or self-insurance additional insureds may have.

F. Evidence of Insurance. Contractor shall furnish the City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies.

- a. The Contractor shall notify the City in writing within five (5) calendar days if any of the insurance coverages or policies are cancelled or materially altered and Contractor shall immediately replace such policies and provide such documentation to the City.
- b. The required insurance policies and coverages, excluding those for Workers' Compensation and Professional Liability, shall name the City of Norfolk, its officers, agents, volunteers and employees as additional insureds, and the certificate of insurance shall show if the policies provide such coverages.
- c. Where waiver of subrogation is required with respect to any policy of insurance required under this Contract, such waiver shall be specified on the certificate of insurance.
- d. Insurance coverage shall be on an occurrence basis unless otherwise permitted by the City's Risk Manager and be in a form and with an insurance company approved by the City, which approval shall not be unreasonably withheld. Any insurance Company providing coverage under this License shall be authorized to do business in the Commonwealth of Virginia.

16. Entry on the Property by the City.

The City shall have the right to enter the Licensed Area for the purpose of inspection at any reasonable time or times during the term of this License, provided however, that such inspections shall not unreasonably interfere with the Contractor's use and occupancy of the Licensed Area.

17. City's Limitation of Liability.

The City shall not be responsible for any defect or change in the condition of the Licensed Area or for any resulting damage or injury to any person or property occurring in the Licensed Area or for any damages or loss of any of the parts or other items in the Licensed Area.

18. Environmental.

- A. Contractor represents, warrants and agrees that: (a) Contractor shall permit no installation or placement of Hazardous Material in the Licensed Area in violation of Environmental Laws; (b) Contractor shall permit no release of Hazardous Material onto or from the Licensed Area; (c) Contractor shall cause the Licensed Area and its use to comply with Environmental Laws and be free and clear of any liens imposed pursuant to Environmental Laws; (d) all licenses, permits and other governmental or regulatory actions necessary for Contractor's use of the Licensed Area to comply with Environmental Laws (the "Permits") shall be obtained and maintained by Contractor and Contractor shall assure compliance therewith; and (e) Contractor shall give City prompt written notice if Contractor receives any notice with regard to Hazardous Material on,

from or affecting the Licensed Area and shall conduct and complete all investigations and all cleanup actions necessary to remove, in accordance with Environmental Laws, such Hazardous Material which Contractor owned, controlled, and/or had responsibility for from the Licensed Area.

- B. City shall have the right at any time during the term of this License, whether before or after default, to conduct or cause to be conducted an environmental inspection or audit of the Licensed Area by itself or by a qualified environmental consultant or engineer selected by the City; and Contractor hereby grants to City and its employees, agents, and independent contractors (hereinafter collectively called "City and its Representatives"), the right to enter the Licensed Area upon reasonable notice for the purpose of conducting, whether before or after default, any inspection, audit or tests, making soil borings, extracting samples, installing monitoring wells, and conducting such other procedures as City and/or its Representatives deem necessary or desirable in connection with such inspection or audit. At any time during the term of this License, provided City has a reasonable basis for doing so, City may require Contractor to cause to be performed, at the expense of Contractor, for the benefit of Contractor and City, an inspection or audit of the Licensed Area by an environmental consultant or engineer approved by the City, and Contractor shall furnish to City, at no cost to City, the written inspection or audit report certifying as to the presence or absence of Hazardous Material on, at, or under the Licensed Area. All inspection reports may be submitted to governmental entities or agencies as requested or as may be required by law or regulations.
- C. Contractor shall indemnify and hold harmless City, its officers, employees, and agents from and against all losses, expenses (including, without limitation, attorneys' fees) and claims of every kind suffered by or asserted against the City as a direct or indirect result of (1) the presence on or release from the Licensed Area of any Hazardous Material, (ii) the violation of Environmental Laws applicable to the Licensed Area, (iii) the requirement to conduct any remediation of Hazardous Materials from the Licensed Area, (iv) the failure by Contractor to comply fully with the terms and provisions of this section, or (v) any warranty or representation made by Contractor in this section being false or untrue in any material respect. The indemnity and hold harmless obligation of Contractor to City under this paragraph includes losses, expenses, (including, without limitation, attorneys' fees) and claims caused by the action or inaction of the Contractor, its agents, employees, invitees and others permitted by Contractor on the Licensed Area or near the Licensed Area.
- D. "Hazardous Material" means polychlorinated biphenyls, petroleum, flammable explosives, radioactive materials, asbestos and any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) Environmental Laws or listed as such by the Environmental Protection Agency. "Environmental Laws" means any current or future federal, state or local law, regulation or ruling applicable to environmental conditions on, under or about the Licensed Area including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Water Act and the Chesapeake Bay Preservation Act. Contractor's obligations under this section shall survive the expiration or termination of this License.

19. Signs.

Contractor shall have no right to install or erect in the Licensed Area any signs, antennas or other equipment or device without the prior written consent of City, which consent shall not be unreasonably withheld.

20. Rights Cumulative.

All rights, powers, and privileges conferred hereunder upon the City to enforce this License shall be cumulative, and are in addition to and not restrictive to those given by law.

21. License Part of Contract.

This License is a part of the above mentioned Contract between the parties and is also subject to the terms and conditions of such Contract.

WITNESS:

Printed Name and Title

By _____

Printed Name and Title

CITY OF NORFOLK:

By _____

Marcus D. Jones, City Manager

Approved as to form and correctness:

Deputy City Attorney

Approved as to Contents:

Director of General Services

Approved as to Contents:

Purchasing Agent